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Negotiations leulitin

8 May 1992

INTRODUCTION The process of negotiations as it is unfolding at Codesa has captured the imagination of the large majority of our people. To most, it is hoped that Codesa II would be able to de-

- liver agreements which would see an end to the present scourge of violence and the installation of a democratic government based on the will of all our people.

There now remain but a few days before Codesa II takes place on the 15th and 16th May, 1992. There are however many issues that remain unresolved. The ANC's primary objective for Codesa II is to achieve agreement on a two-phased Interim Government and Constituent Assembly. The regime, on the other hand, remains intransigent and obstinate on various issues. -

Notwithstanding these problems, and without compromising basic principles, the African National Congress seeks to achieve its objectives. All effort is being made to ensure that we do not see the process of negotiations being prolonged to a Codesa III.

PREPARATIONS

FOR CODESA II

Codesa II is due to be held at the World Trade Centre. The proceedings are to be broadcast live on SATV's spare channel and on radio. All the participants at Codesa I are expected to be present.

OPENING PRAYERS AT CODESA II

Codesa I held in December last year, was opened by prayers. Prayers were conducted by religious leaders from various religious denominations and faiths.

The National Party and the South African Government are now opposed to Codesa II being opened in the same manner. Instead they want the meeting to be opened with a minutes silence. The National Party is opposed to a multi-faith prayer because of their intolerance towards other faiths and denominations. During the whites-only referendum campaign, De Klerk admitted in one of his public speeches that he felt uncomfortable when leaders of other faiths delivered prayers at Codesa I.

This is a case of blatant religious intolerance. The ANC has demanded that religious leaders from all faiths be allowed to deliver prayers at the opening of Codesa II. The ANC calls on all organisations to support this position, a position which has always been supported by democrats.

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PARTICIPATION OF

TRADITIONAL

LEADERS

The Management Committee of Codesa established a Sub-Committee to consider the participation of traditional leaders in Codesa. The Sub-Committee in its final report to the

Management Committee on the 27th April, 1992 recommended the following:-

1 Traditional leaders, should participate at Codesa not as a full participant equal to the others, but in a special way. It was also agreed that, in principle, there should be no difference between the Zulu King and other traditional leaders.

2 Such participation should take the form of one delegation from each of the four provinces consisting of 12 delegates and 5 advisers. In this regard, the various administrations have no right to prescribe who should form part of the delegations

3 For the province of Transvaal, it was agreed that there should be equal representation from each of the 6 regions within the province.

On the form of participation, it was agreed as follows:-

They have the right to participate in the working groups as well as the plenary sessions of Codesa.

They would have the right to make interventions or inputs at the working group level on all matters affecting them.

They would not form part of the decision making process; i.e. they would have a "non-voting" status.

In spite of these recommendations, Inkatha has refused to accept this position compromise - as a result no decision has been taken on the issue.

LEVELLING THE

PLAYING FIELD

All Codesa participants agree that the process of democracy requires that all participants in the political process should be free to participate peacefully in that process without fear

and on an equal footing and on the basis of equality with other participants.

POLITICAL PRISONERS

The issue of political prisoners has still not been resolved. The position and call of the

ANC is as follows:-

' There should be an unconditional amnesty for all remaining political prisoners; The bilateral agreements existing with the regime should be considered within the context of Codesa;

Codesa should create a mechanism to control and monitor the release of political prisoners;

The temporary indemnity granted should be made permanent.

LEGISLATION

There is preliminary consensus that a State of Emergency should only be declared on the advice of a multi-party Interim Government. The reasons for a State of Emergency should be clearly defined and contestable in a Court of law on the grounds that the factual situation existing justify such a declaration. It has been agreed that all legislation offending

political activity, which has already been identified, should be reformed. A special task force has been appointed to do this.

PREVENTION OF VIOLENCE AND POLITICAL INTIMIDATION

There is agreement that all political disputes between parties be resolved peacefully. In this regard, political intimidation has been defined as follows:-

"Any action or set of actions committed by any individual, organisation, political party, government represented at Codesa, as well as the self governing territories or any agency of such government or self governing territory, that is designed by the use or the threat

of use of force or violence to disrupt or interfere with the legal rights of an individual, for instance the right to freedom of expression, opinion, freedom of association and movement."

There is further agreement on the need for the government security forces to bring those responsible for the smuggling of AK 47s and other illegal weapons into the country to book as a matter of urgency. Also, there is a need for the improvement of socio-economic conditions to curb the high crime rate.

CONTROL OF SECURITY FORCES

It has been agreed that all security forces would be placed under the control of the interim government structures.

MEDIA

Agreement has been reached with regard to the following:-

' That an independent and neutral body be established by legislation to lay down standards to be complied with and regulate the telecommunication sector.

The principle function of such a body would be to regulate the utilisation of all broadcasting services and the allocation of licenses according to an agreed set of standards.

That the members of such an independent body shall be South African citizens who will act in the public interest and who shall not be an office bearer of any political organisation or have a vested interest in the film and broadcasting industry.

Organs of civil society would be invited through the press and advertisements to make nominations of persons to serve on the independent body.

INTERIM
GOVERNMENT

Such an independent body would be accountable to the Interim Government or a democratic parliament.

REFUGEES

A joint proposal by the Venda Government, Ximoko, UPF and Inyandza with regard to the issue of Mozambican refugees was made as follows:-

all refugees in South Africa be treated in accordance with internationally accepted standards;

an independent body registers and identities such refugees;

the regime refrains from granting premature citizenship to immigrants and mercenary refugees immediately;

all refugees be treated equally irrespective of race or colour;

condemning the deportation or repatriation of refugees whilst the civil war continues:

condemn any form of exploitation or sale of refugees by farmers and business people.

On the 7th April, 1992, a Technical Committee consisting of a small group of people from Working Group 3 was established with the task of taking toward the exploratory discussion, addressing both details of consensus areas emerging and other areas that needed to be discussed. The Committee submitted its report which agreed to interim Government in two stages. it states inter alia as follows:-

THE TWO STAGES OF INTERIM GOVERNMENT

The first stage of Interim Government is the formation of a Transitional Executive Council (TEC). The TEC will make preparations for the holding of free and fair elections for a constitution making body (the Constituent Assembly). The second stage of Interim

Government is the comprehensive interim Government of national unity established after the elections.

TRANSITIONAL EXECUTIVE COUNCIL

The Transitional Executive Council (TEC) will be multiparty in form and will function alongside the existing legislative and executive structures. The primary purpose of the TEC will be to ensure that free and fair elections are held for a constitution making body.

The TEC would establish sub-councils which would take control of key government functions.

POWERS OF THE TRANSITIONAL EXECUTIVE COUNCIL (TEC)

The TEC will be vested by legislation approved by Codesa with powers necessary to enable it to carry out its functions.

The TEC will have access to all information (including records of governments/ administrations and other participants in the TEC) which may be required by it for the purpose of exercising its functions.

The subcouncils will report to the TEC and their decisions will be subject to confirmation or amendment by the TEC.

The TEC will be able to initiate or participate in negotiations in relation to issues which

arise Outside the defined areas of responsibilities of its sub-councils, if it is of the opinion-

that such issues could have an impact on the levelling of the playing fields or the creation and maintenance of a climate in which free and fair elections can be conducted.

In defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretion will be exercised jointly in consultation with the TEC. This function may be delegated by the TEC to a sub-council, in which event, the ministerial power and discretion will be exercised jointly in consultation with the sub-council concerned.

The TEC will be kept informed of and will be able to ask for and receive information in regard to proposed legislation including bills, proclamations and regulations of all participating governments/ administrations. Any bill, or proposed legislation which is deemed by at least one third of the members of the TEC to be detrimental or could negatively impact on the levelling of the playing field shall not be proceeded with unless and until it has been considered and accepted by the TEC. In the same way, the TEC could object to any action taken by any government or administration; , 4

The decisions of the TEC will be binding on and will be implemented by all participants including governments and administration.

INTERIM If any decision of the TEC or a sub-council is disputed by any participant in the TEC, GOVERNMENT such dispute shall be referred to the Independent Election Commission whose decision shall be final and binding on all participants.

(CONTINUED)

INDEPENDENT COMMISSIONS

There shall be an Independent Election Commission to be given the responsibility for the organising and supervising of free and fair elections. The Commission will be independent of the TEC and will consist of respected persons drawn from a broad cross-section of the population, who will be appointed by the State President on the recommendation of Codesa. The composition, powers and functions of the Commission shall be enacted in legislation to be agreed to by Codesa.

SUB-COUNCILS AND THEIR AREAS OF RESPONSIBILITY

The ANC has proposed that the TEC assumes control of the following areas of government (a sub-council would have to be established in each of the following areas): Defence, Police (Law and Order), Government finance. Elections, Regional and local government and Foreign Affairs.

COMPOSITION OF THE TEC AND SUB-COUNCILS

The TEC will be kept as small as is reasonably possible. Codesa will decide on the composition of the TEC. It will consist of at least one member from each Codesa participant. Should parties not presently in Codesa wish to participate in the TEC, the TEC will have the power to recommend at its discretion that the TEC be enlarged to accommodate them, provided that they commit themselves to comply with and implement the decisions of the TEC.

CONSTITUTION On the 27th April, 1992 the Steering Committee of Working Group It made the following

MAKING BODY proposal arising out of discussions for consideration by the Working Group (NB: these are

(CONSTITUENT mere proposals and have not been agreed to as yet):-

ASSEMBLY) "1. Codesa shall agree to legislative instruments that would make provision for a constitution making body operating within the framework of an interim constitution.

2. Codesa shall consult governments of the self-governing states and other interested parties in the drafting of the legislative instrument/ interim constitution.

Codesa shall agree on a set of general constitutional principles.

The interim constitution shall make provision for:

An elected parliament with the power to:

In terms of agreed procedures, draft a new constitution which not be in conflict with the general constitutional principles;

Act as an interim legislature in terms of such special majorities and general constitutional principles which may be agreed to.

The composition, functions and procedures of an interim executive.

Justiciable civil and political rights during the transition.

The balance between the executive, legislature and judiciary according to the principles underpinning a constitutional state.

Regional boundaries for the purposes of elections.

Elections for the national assembly on the basis of proportional representation, half the seats being allocated through national lists and half being allocated through regional lists.

Decision making on all matters relating to the constitution to be taken in general by a special majority.

Decision on matters relating to regional structures and the distribution of power between central, regional and local levels of government to require a special majority of the regional representatives in the National Assembly in addition to a special majority of all the delegates in the National Assembly.

Codesa shall agree upon special mechanisms to ensure that the National Assembly completes the work of drafting and adopting the new constitution within a specified period of time."

CONSTITUTIONAL in addition to the agreements already reported in the Negotiations Bulletin No.7 on

PRINCIPLES General Constitutional Principles, the Steering Committee of Working Group 2 has prepared the following draft principles for discussion and agreement by the working group:-

REINCORPORATION
OF TVBC STATES

1. Draft Principle on economic freedom, governmental intervention and economic systems:

"The constitution should provide for the promotion of the improvement in the quality of life of all South Africans by enabling economic growth, human development, social justice and equal opportunities for all."

. Draft Principle on the Bill of Fundamental Rights:-

"There shall be a justiciable bill of fundamental rights which shall ensure inter alia:

universally accepted human rights and freedoms;

civil liberties including freedom of religion, speech and assembly;

the equality of all before the law;

property rights, provided that legislation may in the public interest authorise expropriation against payment of reasonable compensation which shall in the event of a dispute be determined by a court of law.

The constitution shall enable the implementation of measures to help address the racial and gender inequities caused by past discrimination."

. Draft Principle on the accommodation of the diversity of languages, cultures and religions:-

"The constitution at all levels of government shall accommodate and protect the right of citizens to practice their religion, enjoy their culture and use their own language both

as individuals and in association with others. This shall include the right of citizens where practicable to have their children educated in their mother tongue and the right

of citizens to establish educational institutions reflecting their language culture and religion, provided that racial discrimination may not be practised. "

. Draft Principle on the role of traditional leaders: - -.

"The constitution should define a suitable role for traditional leaders consistent with the

objective of a united, non racial, non- sexist, democratic South Africa."

The task group appointed by Working Group 4 on the 4th May, 1992 recommended the following statement to the Working Group as a possible basis for consensus:

REINCORPORATION

All delegations have no objection in principle to the reincorporation of the TVBC states.

TRANSITIONAL ARRANGEMENTS

The TVBC states will participate in transitional arrangements as proposed by Working Group 3. on the understanding that these arrangements shall mutatis mutandis impact on the TVBC governments and territories in the same way as they impact on the South African Government and the RSA.

TESTING THE WILL OF THE PEOPLE

The people of the TVBC states shall take part fully in the processes of constitution-making and transitional arrangements, including elections, as may be proposed by Working Groups 2 and 3. Their participation will be arranged in such a way that their votes in a national election shall signify support for or rejection of reincorporation. The results of such

an election shall constitute a sufficient test of the will of the people.

RESTORATION OF CITIZENSHIP

South African citizenship will be restored to the citizens of all the TVBC states who would

have been South African citizens but for the constitutional independence of the TVBC states, immediately after the testing of the will as envisaged in paragraph 3 above.

RESERVATIONS

It should however be noted that the Bophutatswana government has, with the exception of the question of reincorporation, reserved its position in relation to the above.

RETENTION OF BUSINESS CONFIDENCE AND TAXATION ' I

It was unanimously agreed that the process of reincorporation should be conducted in a way that it ensures the retention of business confidence. In this regard, it was agreed that

there was a need for the harmonisation of legislation dealing with labour, taxation and company laws.

ELECTORAL LAW

ISSUES FOR DISCUSSION

LAND TRANSFERS

There was sufficient consensus that no further attempts be made to identify new land for transfer to the TVBC states.

FUTURE OF CIVIL SERVICE

Civil servants should retain their existing salaries, benefits, conditions of service. et c.

There shall be no retrenchments of workers as a result of reincorporation prior to an extensive rationalisation programme in the new South African civil service.

PROPOSED APPOINTMENT OF COMMISSIONS

Two nine member multiparty commissions have been proposed to investigate and make recommendations on the retention of business confidence and good administration during the transitional period.

An electoral law is presently being discussed. The electoral laws of Namibia, Zimbabwe and Salvador are being looked at for guidance on issues such as identification and registration of voters where a large number of the people. as in the case of South Africa, are either illiterate and or have never been registered as voters before.

As requested in our previous Bulletins, the Negotiations Commission looks forward to receiving the recommendations of Regions, Branches, organisations and individuals as to the possible candidates who would be suitable for serving on an Independent Electoral Commission and an Independent Media Board. Please let us have these together with the necessary motivations.

Please address all your correspondences to:-

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