

FROM : PRESS OFFICE
CHIEF MINISTER
KWAZULU GOVERNMENT
TO : HERB PAYNE
NATAL EDITOR
FINANCIAL MAIL
VIA : FACSIMILE # 031 309 4697
DATE : DECEMBER 9, 1992
RE : INQUIRIES RELATED TO THE ADOPTION OF THE CONSTITUTION
OF THE STATE OF KWAZULU/NATAL AS PER YOUR LETTER
DATED DECEMBER 8, 1992

Enquiries:
0358-700630

Dear Sir:

This is provided in answer to the above referenced inquires.

1. REFERENDUM TO RATIFY THE CONSTITUTION OF THE STATE OF KWAZULU/NATAL

The Constitution of the State of KwaZulu Natal will need to be ratified by a popular referendum to become the law of the land. The people of any given territory have the inherent right to express their sovereignty to ordain for themselves institutions of government. Once ratified by the people of KwaZulu and Natal, the Constitution, as all constitutions, will express by itself its own principle of legitimacy and legality. Until the time of its popular ratification, the Constitution of KwaZulu Natal has the status of a very broadly accepted political document in the path of transformation into law. For this purpose what is relevant is the expression of the sovereignty of the people through a referendum, not who calls the referendum and how the referendum is organized, provided that the referendum is democratically conducted.

In this period of transformation of our society, the South African Government shall have the duty to organize this referendum. In fact, the real political constitution of our society at this point in time is a constitution of transformation. This transformation must be founded and guided by the sovereign will of the people who demanded the transformation in the first place. Therefore, the organization of a referendum to test the sovereign will of the people is perfectly consistent, and is even demanded, by the constitution of the transformation. The Chief Minister has asked State President FW de Klerk to comply with this mandate.

We are confident that the State President will meet the democratic demands of the people of our region in this respect. However, should the Government of South Africa fail to fulfil this responsibility, the referendum will be organized by a referendum committee to be established under the terms of the resolution of the KwaZulu Legislative Assembly which approved the Constitution of the State of KwaZulu/Natal. At this point we are under the impression that the decision to organize and hold a referendum is an activity which requires no approval from any legislative or administrative entity. However, this issue might be reconsidered should it become evident that the referendum will have to be organized and conducted without the assistance of the Government of South Africa.

As indicated in the resolution of the KwaZulu Legislative Assembly which approved the Constitution of the State of KwaZulu/Natal, the Joint Executive Authority will be called to approve the Constitution. As we understand it, each representative body has the inherent power to adopt resolutions of a political nature on any matter they deem may affect the welfare of the people whose interests it administers. Throughout the world it is not unusual that government bodies, such as the JEA, adopt resolutions to call for the end of a war or a social unrest, or express their views on any political issue of general significance. As we understand it, the approval of the JEA will come about in accordance with the rules governing the JEA's decision-making.

2. DATE OF THE REFERENDUM

During his December 1, 1992, Press Conference the Chief Minister indicated that he would decline to comment on this matter at this time. However, he also indicated that this is the time to begin democracy building bottom up by means of the creation of regional and state governmental structures. He also added that our country can no longer afford the luxury of any further delay in the process of transformation. Moreover, the Chief Minister indicated that the referendum will take place in a reasonably short time. Similarly, the press statement released by COSAG after the December 7, 1992 plenary session indicated that the process of ground-up democracy building should be accelerated.

3. RELATION BETWEEN THE CONSTITUTION AND NEGOTIATIONS AT NATIONAL LEVEL

The Chief Minister has firmly rejected the criticisms advanced by some, suggesting that the adoption of the Constitution of the State of KwaZulu/Natal would threaten negotiations at the national level. The Chief Minister said that those who made statements of such a nature clearly indicated that they have a preconceived exclusionary vision of the process of transformation of our society.

The Chief Minister indicated that nobody should claim the right to be the arbitrator in the process of transformation or have the right to determine that the transformation of society cannot accommodate the expression of the sovereignty of the people on an issue of such importance as federalism.

The approval of the Constitution of KwaZulu/Natal is a piece in a mosaic which is still to be formed through negotiations. As we consider the agreed goals of the process of transformation of our society, it is clear that this piece of the mosaic is of the right size and right colours and has been put in the right place.

The Chief Minister indicated that this is no time for polemics but is time for conciliation and hard work. For several months the Chief Minister has attempted to bring back all political parties of this country to the table of negotiations, to structure a responsible process which would not allow the ANC to disrupt negotiations again and to begin focusing on the real constitutional issues of our country.

Characterizing this initiative as a "move to preempt multiparty negotiations" is preposterous.

The Chief Minister indicated that the Constitution of the State of KwaZulu/Natal reflects the needs, wants and aspirations of the people of Natal and KwaZulu, and that it is his intention to bring the wisdom of this Constitution and the aspiration of the people of Natal and KwaZulu immediately to the multi-party negotiating table. The Chief Minister stated that it is essential that talks and negotiations resume immediately without any preconditions and preconceptions. What is essential -he stated- is that we no longer delay because our country is no longer ready to accept our impotence and incapacity.

4. BILATERALISM AND TIME TABLE

The Chief Minister has indicated his firm commitment to resume bilateral negotiations as soon as possible. However, he has also stressed that before bilateral negotiations can be resumed, it is essential to create procedures which will assess the structure, purposes and pace of the new negotiating forum to ensure that no party can destructively withdraw from negotiations, as the ANC did from CODESA II. This shall be a Multiparty Conference of Review. The IFP has indicated its willingness to talk to the Government and to any other political formation in order to arrange a structure for the Multiparty Conference of Review. However, the IFP has also indicated its unwillingness to engage in bilateral talks with the Government as a process of negotiating matters of substance. It has also been indicated that once the Multiparty Conference of Review determines the structure and nature of the negotiating forum, the negotiating forum shall decide independently and with no preclusion how to go about completing the transformation of our society. For this purpose the negotiating forum can not receive or be bound by any bilateral agreement or any agreement ostensibly reached at CODESA related to the Constituent Assembly, the transitional constitution, the Interim Government or any other matter.

The Chief Minister has committed himself to accelerate the process of transformation of our society by means of hard work and daily commitment to a negotiation process once it has been restored. The Chief Minister also indicated that the best way of accelerating the process of transformation of our society is to stop negotiating bilateral agreements which then need to be renegotiated with the parties which were excluded from such agreements. Our commitment relies on our willingness to work and discuss substance and details of the new constitutional dispensation of South Africa. In the light of all this, the Chief Minister has stated that any discussion on a possible time frame to complete the process of transformation of our society is premature and we are not in a position to agree on any given date to hold elections. It seems that a different approach would put the cart before the horse. It seems unreasonable to discuss who is going to write the new constitutional dispensation for South Africa and how it is going to be drafted, before having determined what type of constitution should be drafted. The Chief Minister has indicated that if a serious commitment is made to write a federal and pluralist constitution, those who will be charged with the drafting shall be representing the member states and all social, cultural and economic formations of our society. If that were the case, the modality and time-frame related to the process of selection of such individuals should be assessed accordingly. In this respect, the Chief Minister has clearly stated that the issue of federalism and pluralism should be addressed in a preliminary manner and prior to any discussion related to who writes the constitution and when and how the drafting work should begin.