



ANC

Negotiations Bulletin

Number 38

25 November, 1993

Dawn of a New Era

The adoption of the Transitional Constitution by the Plenary of the Multi-Party on the 18th November heralds the dawn of a new era.

Both the Transitional Constitution and the Electoral Bill as agreed to by the parties are due to be passed as law in the last sitting of the apartheid parliament.

In the meantime, appointments to the Transitional Executive Council (TEC) and its staff is presently being discussed. We expect that the TEC would be operational within the next few weeks.

South Africa is therefore firmly, and irreversibly, set on course for its transition to democracy. What does this mean?

In this Bulletin we look at how the structures of the transition are expected to achieve the objectives of levelling the playing field and creating a climate conducive for elections.

However, this must be prefaced by a brief summary of the highlights of the adopted Transitional Constitution.

Transitional Constitution

Preamble

In humble submission to Almighty God,
We the people of South Africa declare that -

WHEREAS there is a need to create a new order in which all South Africans will be entitled

to a common South Africa citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms;

AND WHEREAS in order to secure the achievement of this goal, elected representatives of all the people of South Africa should be mandated to adopt a new Constitution in accordance with a solemn pact recorded as Constitutional Principles;

AND WHEREAS it is necessary for such purposes that provision should be made for the promotion of national unity and the restructuring and continued governance of South Africa while an elected Constitutional Assembly draws up a final Constitution;

NOW THEREFORE the following provisions are adopted as the Constitution of the Republic of South Africa.

Languages

- * Afrikaans, English, siNdebele, sePedi, seSotho, siSwati, xiTsonga, seTswana, tshiVenda, siXhosa and si Zulu shall be the official South African languages at national level and conditions shall be created for

Contents

- * Transitional Constitution (highlights)
- * Elections
- * TEC
- * General

their development and for the promotion of their equal use and enjoyment.

- * A Pan South African Language Board will be established for purposes of promoting the development of languages.
- * Pursuant to the ANC's commitment and respect for all minority groupings in South Africa, constitutional provision for the inclusion the right of languages such as Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu, Urdu, Arabic and Hebrew was won. These languages too will be promoted and developed.

Fundamental Rights

All South Africans shall enjoy fundamental human rights. Of particular importance are the rights relating to workers, restoration of land to the dispossessed and religion.

Workers rights

Workers shall enjoy the right to join trade unions and to organise and bargain collectively. Workers shall also enjoy the right to strike.

Restoration of land

The ANC was successful in securing provision allowing the State to expropriate land subject to the payment of just and equitable compensation taking into account all relevant factors such as the history of the acquisition.

Religion

Further to the protection already granted in respect of the freedom of religion, the ANC was successful in securing provision allowing Parliament to pass legislation with regard to religious family and personal law. This would include provision for the recognition of (e.g. Islamic) marriages.

Interim Legislature and Government of National Unity

- * The President shall be elected at the first sitting of the National Assembly by an ordinary majority;
- * Every party holding at least 80 (of the 400) seats in the National Assembly shall be entitled to designate an Deputy President;
- * If only one or no party hold more than 80

seats in the National Assembly, then the majority party and the second largest party will be entitled to designate one Deputy President each.

- * The Deputy Presidents shall perform the tasks assigned to them by the President;
- * The Cabinet shall consist of the President, Deputy Presidents and not more than 27 Ministers appointed by the President;
- * Each party holding at least 20 seats in the National Assembly shall be entitled to allocated a number of Cabinet portfolios in proportion to the number of seats held by it in the National Assembly;
- * The President shall allocate portfolios to the parties represented in the Cabinet after consultation with the Deputy President and the leaders of the parties represented in the Cabinet;
- * The principle of majority rule is secured in the cabinet. However, decision-making shall take place in a manner which seeks consensus in accordance with the spirit of national unity and to ensure effective government. This does *not* mean decision-making by consensus but by simple majority;
- * Unless the Cabinet loses the confidence of Parliament, national elections will not be held under a new Constitution until 1999.

Transitional Parliament

- * Parliament shall consist of two Houses, National Assembly (400 members) and a Senate (10 per region);
- * For purposes of drawing up the final constitution, the 2 Houses will together. This body is then known as the **Constitutional Assembly**.
- * Parliament will also act as the Legislature during the period of transition. Legislation will be passed by simple majority.

Constitutional Assembly

- * The new Constitution should be adopted by a two-thirds majority. Should this not be possible a referendum would be held seeking a 60% majority support for the Constitution. Should this not be successful and the

Constitution is not adopted within two years, a general election would be called. The newly elected Constitutional Assembly will then be required to pass the Constitution by a 60% majority.

Provincial Government

The nine Provinces originally proposed have now been accepted. Accordingly, South Africa will have the following Provinces:- Eastern Cape, the Eastern Transvaal, Natal, Northern Cape, Northern Transvaal, the Northwest, the Orange Free State, Pretoria-Watersrand-Vereeniging, and the Western Cape.

- * During the period prior to the elected Provincial legislatures establishing its own administrations, the TEC shall appoint for each provincial legislature a provisional secretary who shall attend to matters relating to that Province;
- * Each Province shall have a legislature empowered to pass laws relating to that Province;
- * The number of seats in a provincial legislature shall be determined by dividing the total number of seats cast in the Province by 50 000 (i.e. one seat for every 50 000 voters). However, no Province would be allowed less than 30 or more than 100 seats;
- * Each Provincial Legislature shall elect a Premier who in turn shall appoint an Executive Council of not more than 10 members;
- * A party holding more than 10% of the seats in the Provincial Legislature will be entitled to be allocated a number of Executive Council portfolios in proportion to the number of seats held by other parties.

Commission on Provincial Government

The Commission will be appointed by the President. Some of the objects of the Commission will be to:-

- * Advise the national government on the consolidation of administrative institutions and structures;
- * finalise the number and the boundaries of

the provinces;

- * make recommendations on the final delimitation of powers and functions between national and provincial institutions of government.

Election

Voters will elect -

- * 200 members on a national list to the National Assembly;
- * 200 members on provincial lists (i.e. the 9 provinces) to the National Assembly;
- * A minimum of 30 and a maximum of 100 members to each of the Provincial Legislatures. (This however is still subject to further discussion and will be finalised soon.)

National Lists for the National Assembly

- * For purposes of electing members of the National Assembly on the national party lists, each party will submit a list of candidates not exceeding 200.
- * For purposes of filling the two hundred seats in the National Assembly, the total number of votes cast in the general election shall be divided by 200 and the result shall be the quota of votes per seat. That is to say if a total of 20 million people vote, this number will be divided by 200 (seats) thus arriving at 100 000 votes necessary to achieve 1 seat in the National Assembly.
- * The total number of votes cast in favour of a registered party shall therefore be divided by the quota of voters per seat and the result shall determine the number of seats allocated to that party. To use the example above, if 15 million of the voters vote for the ANC, this number will be divided by 100 000 (being the quota of votes) to arrive at 150 seats in the National Assembly.

Provincial Lists for the National Assembly

- * There is provision for 200 seats in the National Assembly.
- * Assume that there are 20 million people in

South Africa who vote. This number must be divided by 200 seats. This would arrive at the number of 100 000 votes necessary for one seat in the National Assembly. Assume also that of this number 4 million of the voters vote in the PWV. This would mean that we would have to divide 4 million by 100 000 to arrive at the number of seats allocated to the PWV Province. The PWV would therefore be entitled to 40 of the 200 seats.

- * Using the example above, the total number of votes cast in a Province in favour of a party shall be divided by the number of votes necessary to obtain one seat. That it to say that if the ANC wins 3 million of the 4 million votes cast in the PWV, the ANC would be entitled to 30 of the 40 seats to be allocated to the PWV in the National Assembly.

Provincial Legislatures

- * The quota of votes per seat required for Provincial government is 50 000 votes per seat. There will however be a minimum of 30 and maximum of 100 seats.
- * The total number of votes cast in a Province shall be divided by the quota of votes per seat.
- * Using the above example, if 4 million voters vote in the PWV Province, this number must be divided by 50 000 to establish the number of seats there would be in its Provincial Legislature. Thus, 4 million voters would allow the PWV a Legislature with 80 seats.
- * Accordingly, if 3 million of the voters in the PWV vote for the ANC, the ANC would be entitled to 60 of the 80 seats.

TEC

Once the TEC is established, we would then be able to start implementing all our agreements. The process of transition would then practically be on course.

In this regard, our objectives are to ensure that we level the political playing field and creating a climate conducive for free and fair elections to be held.

This is to be done by ensuring that all armed formations, the SADF and SAP in particular, are placed under a joint discipline. We would then be able to combat violence. The Sub Councils of the TEC would also be in a position to ensure that the NP regime is not able to use any of the state resources or structures so as to unfairly prejudice the other parties.

The establishment of the TEC would also ensure that the IEC (Independent Electoral Commission and the IMC (Independent Media Commission) is put in place. These structures would ensure that we have as free and fair an election as possible.

General

In the meantime, we are presently finalising the final technical drafting of the Constitution. We expect to have a final draft of the Constitution ready to be passed as legislation within the week.

In view of the importance of the matters relating to the transformation of the Police, the National Defence Force and local government, we intend to focus on these in the forthcoming Bulletins.

Notice

This Bulletin is intended merely to inform and stimulate discussion. The views contained herein do not necessarily reflect the official views of the NEC of the ANC.