



ANC

Negotiations Bulletin

Number 26

2 June, 1993

Introduction

Following the agreement at the Multi-Party Negotiating Council, various Technical Committees were established (See: Bulletin 25). Each party was invited to forward their submissions to the relevant Technical Committee for consideration.

The ANC presented its submissions. Here below is a summary of the submissions it made:-

Constitutional Matters

1. Form of State

South Africa shall be a united, non-racial, non-sexist and democratic state. South Africa shall be a sovereign state and must be seen as a single, non-fragmented entity including Transkei, Bophutatswana, Venda and Ciskei.

Government shall be structured at national, regional and local levels. At each level there shall be democratic representation with appropriate legislative and executive powers and functions. Such powers and functions at central and regional levels shall be entrenched in the constitution.

The national government shall have overriding powers in matters that are not allocated exclusively in the constitution to the regional level of government.

2. Constituent Assembly (CA)

The new constitution of South Africa must involve the people of South Africa. It must be the product of a democratic process. This means that the people drafting it should be elected for that purpose. The people elected would sit in the Constituent Assembly. The task of the CA would be to draft and adopt the constitution.

The task of drafting the constitution must not be limited in any way except by agreed general constitutional principles.

The proposal for the setting up of a CA is contained in the ANC's draft 'Transition to Democracy Act'.

(Please note: The proposed constitutional principles and the draft Act have been stated and explained in previous Bulletins. It will therefore not be restated here.)

3. Transitional Constitution.

A transitional constitution (i.e. the Transition to Democracy Act) is important to provide a legal framework within which a new constitution could be drafted and adopted. However, it is also a vision of the transitional process from apartheid to democracy. It would also give legal effect to the agreements reached in the multi-party negotiating forum.

The objectives of this transitional process are:-

- * to ensure free political activity, a level playing field and to guarantee free and fair elections;
- * the holding of elections, based on one

4. Transitional, Regional/Local Government

person one vote, to a CA;

- * to provide mechanisms that would allow for the governance of the country as from the date of elections and until a new constitution has been adopted.

During the period of transition we should adopt the four provinces, namely Natal, Transvaal, the Cape Province and the Orange Free State with its original boundaries as the interim regions.

The ANC therefore proposes that there should be four regions during the period of the transition. The division of powers and functions between central government and the transitional regions should be similar to that used at the time of the Union.

As for the structures for regional administration during the transition period, the objective during this relative short period of transition will be catered for by providing for an appropriate provincial executive committee as well as an administrator for each region.

5. The Bantustans

None of these bantustans ever enjoyed any international recognition. These bantustans, Bophutatswana, Venda, Transkei and Ciskei should be reincorporated into a united, non-racial, non-sexist and democratic South Africa. Citizenship of people living in these areas should also be restored.

6. Independent Commission on Regions

The issue of regions is a matter of concern to many parties. The ANC is mindful of this. Accordingly, the ANC has considered the feasibility of setting up an Independent Commission on Regions that would have amongst its functions the following tasks:

- * that of making recommendations to the Multi-party Negotiating Council on regional boundaries for the purposes of the election of the CA;
- * that of making recommendations to the Multi-Party Negotiating Council on the boundaries, powers functions and structures for the purposes of regional administration during the period of transition; and
- * that of enquiring into, and making recommendations to the CA, on boundaries,

constitutional structures, powers and functions of regional government structures to enable the CA to finalise the issue of regionalism.

As a principle, the ANC believes that the issue of regions should be finalised by the CA. However, the ANC is anxious that the modalities' pertaining thereto be resolved in agreement with all parties concerned.

That ANC is therefore prepared to place its proposals on the issue of electoral regions and regional administration during the transition period, as well as the issue of regions in a new constitutional order, before such a Commission.

7. Local Government

There already exists a national negotiating forum on local government issues at which all interested parties are represented. The view of this forum should therefore be taken into account.

Fundamental Rights during the Transition

Whilst it is the belief of the ANC that the final Bill of Rights shall be adopted by the CA as part of a future constitution, the following are fundamental rights that it is submitted should be protected and guaranteed in a transitional constitution:

- * freedom from racial discrimination and the right of women to enjoy equal rights;
- * freedom of speech, expression, thought, conscience and belief which shall include the freedom of the press;
- * the right to personal freedom, privacy including the right not to be detained without trial or from arbitrary search and seizure and the integrity of the home and inviolability of personal communications;
- * The right to assemble, hold meetings and processions;
- * The right to form trade unions and employers organisations;
- * The respect for human dignity and of a person to use the language and to participate in the cultural life of his/her choice.

The Transitional Executive Council (TEC)

The submission of the ANC was in the form of draft legislation. The TEC shall be constituted with executive powers for the following purposes:-

- * to prepare for and to facilitate the transition to a democratic order in South Africa;
- * to create a climate for free political participation;
- * to promote conditions conducive to the holding of free and fair elections.

Whilst the NP regime may still govern, it shall not have any authority to make any laws or regulations which relate to the above, and more particularly, in respect of:-

- * regional and local government;
- * law, order, stability and security;
- * defence;
- * finance;
- * foreign affairs;
- * any other matter assigned to the TEC.

Repeal of Discriminatory Legislation

The ANC in its submissions provided the following categories of laws which should be repealed:-

- * Laws based on racial discrimination;
- * Laws based on gender discrimination;
- * Laws inhibiting free political activity;
- * Laws that militate against the creation of a climate conducive for free and fair elections.

Independent Elections Commission (IEC)

The IEC has been discussed in our previous Bulletins.

The IEC shall be independent of all government structures. Its tasks are to run, administer and monitor the elections and to ensure that it is conducted honestly and fairly. The IEC shall be appointed by the Multi-party Forum or TEC and consist of not less than 7 or more than 11 members of integrity and must be people qualified to vote. In addition, there shall be four persons from the international community appointed to the Commission.

No person shall serve as a Commissioner and remain an official or office bearer of any political party or appear as a candidate in the elections.

The IEC would also be required to certify as to the fairness and freeness of the election. It should also have the ability to decide on measures to correct or rectify substantial or material irregularities or unfairness in the elections.

Persons entitled to vote - all citizens of South Africa, including the bantustans, who have attained the age of 18 years shall be eligible to vote. A citizen is defined as a person born in South Africa, or having at least one parent who is a South African citizen, or married to a citizen, or was resident in South Africa for a continuous period of at least five years.

Registration of Political Parties - the IEC shall register all parties or organisations intending to participate in the elections. Such a party, if accepted, would be obliged to pay a deposit of R100 000 that would be reimbursed should such party win more than 3% of the votes cast in the elections. The party would also have to show 20 000 signatures to prove its qualification to register and give a written undertaking that it will abide by the Code of Conduct for parties and the decisions of the IEC. Upon registration, such a party would be issued with a certificate of registration.

The IEC would also register the logo or symbol of each party.

The Independent Media Commission (IMC)

The IMC shall have 7 commissioners nominated by the public and appointed by the Multi-party Forum.

The main objects of the IMC shall be to promote freedom of expression in order to assist the creation of a climate favourable to free and fair elections; fair and equitable access to broadcasting services by political parties; monitoring of broadcasting services to ensure compliance with fairness guidelines on coverage of issues. They would also monitor all government information services and funded publications to ensure their impartiality.

In the promotion of its objects the IMC shall establish committees which shall include a Political Communications Committee, Fairness Guidelines Committee, a State Media Committee and a Monitoring Committee

However, the printed media and the programme content of broadcasting services that do not relate to political developments, party political broadcasts, political advertising and the coverage of issues with regard to elections or political parties will not fall within the jurisdiction of the IMC.

General

The next Bulletin will focus on the reports of the various Technical Committees to the Negotiating Council.

Notice

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